

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 392.

**THE TERRITORY OF ALASKA AND JUNEAU HARDWARE
COMPANY, APPELLANTS,**

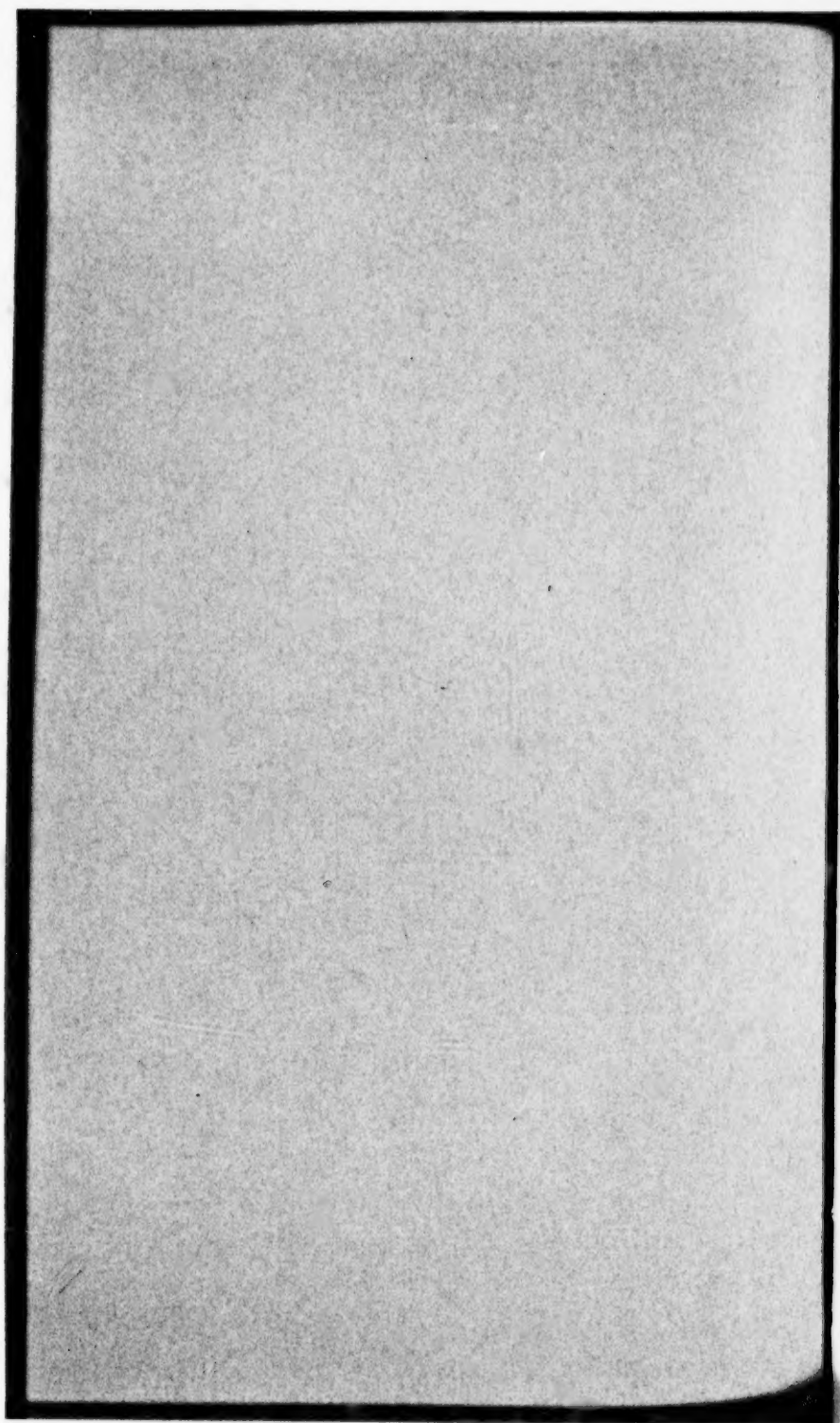
vs.

**JOHN W. TROY, COLLECTOR OF CUSTOMS FOR THE
DISTRICT OF ALASKA.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF ALASKA, DIVISION No. 1.**

FILED JULY 2, 1921.

(28,347)



(28,347)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 392.

THE TERRITORY OF ALASKA AND JUNEAU HARDWARE
COMPANY, APPELLANTS,

vs.

JOHN W. TROY, COLLECTOR OF CUSTOMS FOR THE
DISTRICT OF ALASKA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF ALASKA, DIVISION No. 1.

INDEX.

	Original.	Print.
Names and addresses of counsel.....	<i>a</i>	1
Amended complaint.....	1	1
Demurrer	10	6
Ruling on demurrer.....	11	7
Order sustaining demurrer.....	17	11
Petition for appeal.....	18	12
Assignment of errors.....	19	13
Bond on appeal.....	21	15
Citation and service.....	23	16
Præcipe for record.....	24	17
Clerk's certificate.....	25	18



a In the District Court for the Territory of Alaska, Division Number One, at Juneau.

No. 2077-A.

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY,
a Corporation, Plaintiffs in Error,

VS.

JOHN W. TROY, Collector of Customs for the District of Alaska,
Defendant in Error.

Names and Addresses of Attorneys of Record.

John Rustgard, Attorney General for the Territory of Alaska, Juneau, Alaska, for Plaintiffs in Error.

United States Attorney, James A. Smiser, and Assistant United States Attorney, Walter Schaffner, Juneau, Alaska, for Defendant in Error.

1 In the District Court for the Territory of Alaska, Division Number One, at Juneau.

No. 2077-A.

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY,
a Corporation, Plaintiffs,

VS.

JOHN W. TROY, Collector of Customs for the District of Alaska,
Defendant.

Amended Complaint.

Plaintiffs herein complain of the defendant, and for their cause of action allege:

I.

That the above named plaintiff, Juneau Hardware Company, is and during all the time herein mentioned has been a corporation, duly incorporated, existing and doing business as such under and by virtue of the laws of the Territory of Alaska, and has paid the license fee required by the laws of the Territory for the year 1921.

II.

That the said Juneau Hardware Company has for several years last past conducted an extensive business as a hardware merchant at the City of Juneau, in the Territory of Alaska, is conducting such

business at such place at the present time, and intends to continue to conduct said business at such place in the future; that all, or nearly all, of the merchandise handled by the said plaintiff in such business is and will be purchased by it in various parts of the United States outside the Territory of Alaska, and all, or nearly all, of such merchandise has been, is and will be transported into the Territory of Alaska from various parts of the United States outside of said Territory.

III.

That on or about the 31st day of May, 1921, said plaintiff the Juneau Hardware Company purchased at Ewart, in the State of Michigan, merchandise consisting of hardware, to wit, four dozen puevy handles and two dozen pike poles, all of the value of more than one hundred dollars (\$100); that said merchandise is intended for the merchandise stock in said plaintiff's mercantile establishment at Juneau, Alaska, and to be sold at that place to the public in the Territory of Alaska; that said stock of merchandise was shipped from Ewart in the State of Michigan on or about June 1, 1921, and was routed over the Pere-Marquette Railway from Ewart, Michigan, to Chicago, Illinois, thence over the Sault St. Marie Railway and the Canadian-Pacific Railway through Canada to the port of Vancouver, in British Columbia, and thence not via an American vessel, but via a British vessel, and a vessel not authorized to carry freight or passengers between American ports, belonging to the Canadian-Pacific Railway, a British corporation, to the port of Juneau, in the Territory of Alaska; that said shipment of merchandise is the property of the above named plaintiff, the Juneau Hardware Company, and is now in transit over said route and will be so transported as aforesaid from the American point aforesaid through Canada and over a Canadian railroad to the port of Vancouver, British Columbia; thence on a British vessel, not authorized to carry freight or passengers between American ports, to the port of Juneau, in the Territory of Alaska, in violation of the provisions of Section 27 of the Act of Congress, approved June 5, 1920, entitled "An Act to provide for the promotion and maintenance of the American Merchant Marine, to repeal certain emergency legislation and provide for the disposition, regulation and use of property acquired thereunder, and for other purposes", but that said merchandise above described is otherwise shipped, transported, carried and manifested, pursuant to the laws, rules and regulations of the United States in such cases made and provided; that plaintiff, the Juneau Hardware Company, will in the future continue in the same manner to ship to the Territory of Alaska large quantities of merchandise, amounting in value to many thousands of dollars, from points in the United States outside of Alaska, and to ship the same over Canadian railroad lines to the ports of Prince Rupert or Vancouver; thence via some foreign vessel not authorized to carry freight between American ports, all in violation of said regulation of commerce contained in said Section 27 of the said Act

of June 5, 1920, but otherwise in conformity with the laws, rules and regulations of the United States in such cases made and provided.

IV.

That defendant is the United States Collector of Customs for the District and Territory of Alaska; that he has been instructed by the Secretary of the Commerce of the United States to carry out the provisions of said Section 27, and to that end to confiscate all merchandise shipped or transported into the Territory of Alaska in violation of the provisions of said Section 27, and he now threatens, and it is his intent and purpose, to confiscate the said shipment of merchandise above described and belonging to said Juneau Hardware Company, and to confiscate all other shipments so made by the Juneau Hardware Company in violation of the said provisions of said Section 27, as soon as such merchandise arrives at the port of Juneau, Alaska, on such British vessel, and to do so upon the ground and on the pretext that such is his duty as the United States Customs Collector of the District of Alaska, and that the provision of said Section 27, which provides, in substance and effect, that merchandise transported by land and water from a point in the United States through British territory to some point in the Territory of Alaska, shall be confiscated unless the same is carried over the water part of the route in a vessel built and documented under the laws of the United States and owned by persons who are citizens of the United States or vessels to which the privilege of engaging in the coastwise trade is extended by Sections 18 or 22 of the aforementioned Act of June 5, 1920, is legal and operative.

V.

That these plaintiffs contend and submit to this Honorable Court that the said Section 27 of the said Act of June 5, 1920, is in conflict with the Constitution of the United States and in particular violates sub-section 6 of Section 9 of Article I of the said Constitution in this, that it gives by a regulation of commerce a preference to some ports over other ports of the United States, and discriminates against the ports of Alaska in favor of the other ports of the United States by the said regulation of commerce contained in said Section 27; that by reason of said facts the said section, to the extent that it so discriminates against the ports of Alaska, is void and of no force and effect.

Plaintiffs further contend and respectfully submit to this Honorable Court that plaintiffs, and each of them, and all the people of the Territory of Alaska and all others, have legal right to ship merchandise from any point in the United States outside of Alaska to any port in the Territory of Alaska, and to do so over a Canadian railway line without carrying such merchandise over the water course of such route in an American vessel, or in some vessel to which the privilege of engaging in the coastwise trade is extended by Sections 18 or 22 of the Act of June 5, 1920, above mentioned; that

defendant has no right or authority to confiscate the said merchandise of plaintiff the Juneau Hardware Company aforesaid, and his action in doing so will be unlawful and in violation of the Constitution of the United States, for the reasons above stated, and will cause the said plaintiff the Juneau Hardware Company and the people of the Territory of Alaska irreparable injury, for which plaintiffs have no plain, speedy or adequate remedy at law.

VI.

That plaintiff the Juneau Hardware Company and a large number of other citizens of Alaska desire and intend in the immediate future to import into the Territory of Alaska large quantities of merchandise, amounting in value to many hundreds of thousands of dollars, from various parts of the United States outside of Alaska, and to transport such merchandise over Canadian railway lines to the ports of Vancouver or Prince Rupert in British Columbia and thence to the Territory of Alaska by some British vessel of Canadian or

6 British register, not authorized to engage in the coastwise trade; and it is the purpose and intent of defendant and his successors in office to unlawfully confiscate all such merchandise and to do so upon the ground and on the pretext that it is their duty so to do as United States collectors of customs, and that such shipments are made in violation of the provisions of Section 27 above referred to; and they will so confiscate such shipments unless enjoined and restrained by this court from doing so; that it is the desire and intent of a large number of the citizens of Alaska to ship in the immediate future large quantities of merchandise, amounting in value to many hundreds of thousands of dollars, from the Territory of Alaska to various points in the United States outside of Alaska, and to do so via British ships and ships not authorized to engage in the coastwise trade, to the ports of Prince Rupert or Vancouver in British Columbia, and thence over Canadian railway lines to their destination in some of the states of the United States; that defendant's wrongful and unlawful acts in confiscating such merchandise because the same is shipped in violation of said provisions of said Section 27, as well as his threat to do so, will cause plaintiff the Juneau Hardware Company, as well as all the people of the Territory of Alaska, great expense and irreparable loss, as well as constant annoyance, and will necessitate the institution of a multiplicity of suits in the future to protect such shippers and such merchandise, unless defendant be enjoined and restrained as herein prayed for; that the question of the constitutionality of the said provisions of said Section 27 is of great importance to the people of the Territory of

7 Alaska, and affects all the industries of said Territory; that the principle involved in this suit and in the question of the right of defendant to confiscate merchandise shipped to or from Alaska in violation of the provisions of Section 27 of the said Act of June 5, 1920, is of great interest and importance to the Territory of Alaska, its people and its industries, and the Attorney General of the Territory has been duly directed by the Governor, Sec-

retary and Treasurer of the Territory to prosecute this suit, in the name of the Juneau Hardware Company and the Territory of Alaska, or either of them, and to do so at the expense of the Territory of Alaska; that plaintiffs have no plain, speedy or adequate remedy at law.

Wherefore, plaintiffs pray that it may please this Honorable Court to perpetually and forever enjoin and restrain defendant and his deputies, his successors in office and their deputies (1) from confiscating the merchandise belonging to plaintiff the Juneau Hardware Company, above described, upon the ground that the same has been shipped in violation of the regulation of commerce contained in Section 27 of the Act of June 5, 1920, above referred to; (2) from confiscating any merchandise of any kind shipped to the Territory of Alaska by any person or corporation from any point in the United States outside of Alaska over a Canadian railway line and thence by water via a British vessel not authorized to carry freight or passengers between American ports or any vessel that is not of American register, to a port in Alaska, upon the ground that such shipment so made is in violation of the aforementioned regulations of commerce contained in said Section 27; (3) from enforcing

in any manner any provision of Section 27 which discriminates against the ports of Alaska and in favor of the ports of the United States outside of Alaska, either against the plaintiff the Juneau Hardware Company or the said merchandise so shipped as aforesaid, or against any other merchandise shipped in violation of the provisions of said Section 27. Plaintiffs further pray that defendant, his deputies and successors in office, pending the determination of this cause, be enjoined and restrained from confiscating the shipment of merchandise above referred to and belonging to the Juneau Hardware Company and which is now in transit, in violation of the said unequal and discriminating provisions of said Section 27, upon the ground that such merchandise has been shipped in violation of said provisions of said Section; and that plaintiffs have such other and further relief as to the court may seem just and proper.

JOHN RUSTGARD,

*Attorney General for the Territory of Alaska
and Attorney for Plaintiffs.*

UNITED STATES OF AMERICA,

Territory of Alaska, vs:

W. G. Johnson, being first duly sworn, deposes and says: That he is a resident of the city of Juneau, Alaska, and Manager and Treasurer of the above named plaintiff the Juneau Hardware Company, a corporation, and authorized to make this verification; that he has heard read the foregoing amended complaint, and that the same is true, except as to the allegations therein set out on information and belief, and as to those allegations, he believes it to be true.

W. G. JOHNSON.

Subscribed and sworn to before me, this 3rd day of June, 1921.

JOHN RUSTGARD,

[SEAL.] *Notary Public in and for the Territory of Alaska.*

My commission expires Oct. 8th, 1922.

Copy received June 6, 1921.

JAMES A. SMISER,

U. S. Atty.

Filed in the District Court, District of Alaska, First Division,
Jun. 6, 1921.

J. W. BELL,

Clerk.

By _____,

Deputy.

Filed in District Court June 6, 1921.

10 In the District Court for the District of Alaska, First Division,
at Ketchikan.

No. 2077-A.

THE TERRITORY OF ALASKA and JENSEN HARDWARE COMPANY,
a Corporation, Plaintiff,

VS.

JOHN W. TROY, Collector of Customs for the District of Alaska,
Defendant.

Demurrer.

Comes now John W. Troy, Collector of Customs for the District of
Alaska, defendant in the above-entitled action and demurs to the
amended complaint heretofore filed, upon the following grounds:

I.

That there is defect of parties plaintiff.

II.

That two alleged causes of action have been improperly united in
said amended complaint.

III.

That the amended complaint does not state facts sufficient to
constitute a cause of action.

Wherefore defendant prays that the same may be dismissed.

Dated at Ketchikan this 7th day of June, 1921.

JAMES A. SMISER,
United States Attorney;
WALTER SCHAFFNER,
Assistant U. S. Attorney,
Attorneys for Defendant.

Filed in the District Court, District of Alaska, First Division,
Jun. 9, 1921.

J. W. BELL,
Clerk,

By V. F. PUGH,
Deputy.

Service of the above is acknowledged this 7th day of June, 1921.

JNO. RUSTGARD,
Attorney for Plaintiffs.

11 Filed in the District Court, District of Alaska, First Division, Jun. 13, 1921. J. W. Bell, Clerk, by L. A. Green, Deputy.

In the District Court for the District of Alaska, Division No. One,
at Ketchikan.

No. 2077-A.

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY,
a Corporation, Plaintiff,

vs.

JOHN W. TROY, Collector of Customs for the District of Alaska,
Defendant.

Ruling on Demurrer.

John Rustgard, for plaintiffs.

James A. Smiser and Walter L. Schaffner, for defendant.

Delivered June 13, 1921.

JENNINGS, Judge:

This is a suit for an injunction to restrain the Collector of Customs of the port of Juneau from taking proceedings to forfeit certain merchandise alleged to be in transit to Juneau in a ship of foreign registry and ownership, and consigned to the Juneau Hardware Company. It is alleged that the Collector threatens to take steps to have said shipment forfeited on account of the fact that said shipment is being made in violation of Section 27 of the Act of Congress of June 5, 1920, entitled "An Act To provide for the promotion and maintenance of the American merchant marine, to repeal certain emer-

gency legislation and provide for the disposition, regulation and use of property acquired thereunder, and for other purposes (page 988, Statutes 1919-1920, 2nd Session, 66th Congress), which said section provides as follows:

"That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including Districts, Territories, and possessions
12 thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: Provided, that this section shall not apply to merchandise transported between points within the continental United States, excluding Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities."

To the amended complaint in the case a demurrer has been interposed on the ground that the said amended complaint does not state facts sufficient to constitute a cause of action. In support of the demurrer it is argued (1), that there is no allegation in the amended complaint that the route over which the shipment in question is proposed to be sent is a route for which the Interstate Commerce Commission has prescribed rate tariffs, and hence does not come within the proviso of the Act; (2), that even if it were true that the said route was one for which the Interstate Commerce Commission has prescribed a rate tariff, still the amended complaint states no facts showing that the Act in question is unconstitutional.

I think both points are well taken. As to the first one, it may be observed that if the particular shipment in question is not coming over a route for which the Interstate Commerce Commission has prescribed tariff rates, then the matter does not come within the proviso of the statute and the said shipment and Alaska are not discriminated against in any way whatsoever.

As to the second point, to wit, the question of the constitutionality of the above entitled Act, commonly known as the "Jones Shipping Bill," the contentions of the respective parties are as follows: Plaintiffs contend that section 27 of said Act "violates the demand for equality placed upon the Congressional enactments by sub-section 6 of Section 9 of Article I of the Constitution, which provides:

13 "No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another."

And they rely largely upon the opinion of the majority of the Court in the case of *Downs v. Bidwell*, reported in 182 U. S., page 244,

where the Court had under consideration the question as to whether or not the Foraker Act in imposing duties upon merchandise shipped from Porto Rico was constitutional. It was urged that although the Court in that case declared that Congress had the right to levy duties upon goods shipped from Porto Rico, yet it had that right because Porto Rico had not been "incorporated" in the United States, and remarks of the Court are cited which, it is alleged, show that if Porto Rico had been incorporated in the United States, the Foraker Act would have been in violation of that provision of the Constitution which prescribes that all "duties, imposts and excises shall be uniform throughout the United States." The argument proceeds that as Alaska has been incorporated in the United States, the Constitution applies here in full force, and so the Jones Act, by discriminating against the ports of Alaska, is obnoxious to that prohibition against the preferring of the ports of one state to another.

On the other hand defendant contends that Alaska not being a state of the Union, the clause alleged to have been contravened is inapplicable.

The argument advanced by plaintiffs would be conclusive if the language of the two sections of the Constitution were the same, but they are not the same. The section as to the uniformity of duties, imposts and excises, prescribes that such duties, etc., shall be "uniform throughout the United States;" whereas the section prohibiting preferences between the ports of the states refers only "to the ports of one state over those of another."

14 When Alaska became incorporated in the United States it became a part thereof, it is true, but nevertheless it sustained a different relation to the whole United States from that which the states themselves occupied. In speaking of the power to lay and collect duties, imposts and excises, Chief Justice Marshall said, in the case of *Loughborough v. Blake*, 5 Wheaton, 317:

"The power to lay and collect duties, imposts, and excises may be exercised, and must be exercised, throughout the United States. Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit but of one answer. It is the name given to our great republic, which is composed of States and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland and Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties and excises, should be observed in the one, than in the other."

To say that a certain thing must prevail throughout the United States would, of course, include Alaska, because Alaska is a part of the United States; but the Constitution was adopted as a compact between independent states, thirteen of them originally. The principles of government enunciated in that Constitution were new in the domain of political science. No such scheme of government had ever existed before. It was not without many misgivings as to the

power conferred upon the Federal Government that the original thirteen colonies ratified that instrument. The individual colonies were proud of their respective sovereignties and fearful lest the Federal Government might absorb more of that sovereignty than they were willing to part with. They therefore hedged about their grant of power in every particular in which they thought limitations should be imposed. They were fearful that discriminations might be made in favor of larger or more prosperous states as against the smaller or less prosperous states; and they therefore insisted that in all the provisions as to the regulation of interstate commerce the states should be treated equally. The provision of the Constitution which it is alleged section 27 of the Jones Shipping Bill contravenes was not a prohibition relating to the territory of the United States—it had to do only with the states of the Union.

"The Constitution was created by the people of the United States as a union of States, to be governed solely by representatives of the States; and even the provision relied upon here, that all duties, imposts, and excises shall be uniform 'throughout the United States', is explained by subsequent provisions of the Constitution, that 'no tax or duty shall be laid on articles exported from any State,' and 'no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another.' In short, the Constitution deals with States, their people, and their representatives."

Downs v. Bidwell, supra, page 251.

In dealing with foreign sovereignties, however, the term United States "has a broader meaning than when used in the Constitution, and includes all territories subject to the jurisdiction of the Federal government, wherever located. In its treaties and conventions with foreign nations this government is a unit. This is not so because the territories comprised a part of the government established by the people of the States in their Constitution, but because the Federal government is the only authorized organ of the territories, as well as of the States, in their foreign relations." (*Ibid.*, page 263.)

But it is contended that because Chief Justice White has given a historical review of proceedings in the Convention which resulted in the adoption of different clauses relating to interstate commerce and their arrangement, and there comes to the conclusion that "although the provisions as to preference between ports and that regarding the uniformity of duties, imposts and excises were one in purpose and one in adoption, and were originally placed together and became separate only in arranging the Constitution for the purpose of style", therefore the two expressions are identical in meaning. Even if the contention be sound, yet the Supreme Court in *Downs v. Bidwell*, supra, expresses itself thus:

16 "Construed together, the purpose is irresistible that the words 'throughout the United States' are indistinguishable

from the words 'among or between the several States,' and that these prohibitions were intended to apply only to commerce between ports of the several states as they then existed or should thereafter be admitted to the Union."

Again: Alaska has indeed been incorporated in, and is a part of, the United States, and the Constitution is in full force here, but that fact does not change Alaska from being a territory into a State, nor render applicable to Alaska those provisions of the Constitution which have to do only with the States, albeit the provision "throughout the United States" means throughout every part and parcel "of the great American empire." Besides, the very Constitution which is in force provides that Congress has power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," (Constitution, Article 4, Section 3, Clause 2.) Can it be doubted that under the power thus conferred, Congress has the power, if it chooses to exercise it, to absolutely close, not only the port *or* Juneau but, all the ports of Alaska? Could it not, if it so chose, prohibit all commercial intercourse with Alaska? Having been given the power "to dispose of" the territory, could it not dispose of any part, or the whole thereof? He who denies the existence of this power would have a hard time explaining what is meant by the words "shall have power to dispose of". If Congress has the power to dispose of Alaska, or the power to prohibit commercial intercourse with Alaska, can it be argued that it has not the power to prescribe that such commercial intercourse as is to be had with Alaska shall be had by means of vessels of American ownership and registry?

I very much regret that the time occupied daily in the trial of cases precludes any more exhaustive opinion on my part than is here contained. However, the fact that the opinion is in favor of the constitutionality of the Act does not call for any extended exposition of my view on the subject.

The demurrer will be sustained.

17 In the District Court for the District of Alaska, Division Number One, at Ketchikan.

No. 2077-A.

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY, a Corporation, Plaintiffs,

vs.

JOHN W. TROY, Collector of Customs for the District of Alaska, Defendant.

Order.

The above entitled action having heretofore on the 10th day of June come on duly and regularly for hearing upon the demurrer for

the defendant, John W. Troy, Collector of Customs for the District of Alaska, to the amended complaint of the plaintiffs herein and having been argued by counsel for the respective parties and having on said date been taken under advisement by the Court, and the Court having now considered the same and being fully advised in the premises, and having made and filed his written Opinion,

It is ordered that the demurrer of the defendant, John W. Troy, Collector of Customs for the District of Alaska, to the amended complaint of the plaintiffs herein be and the same hereby is sustained.

And thereupon counsel for plaintiff having in open court declined to plead further and waive his rights so to do,

It is ordered, adjudged, and decreed that the above entitled action be and the same hereby is dismissed; and that the defendant do have and recover of the plaintiffs and each of them his costs herein to be taxed.

Entered in open court this 14th day of June, 1921.

ROBERT W. JENNINGS,

District Judge.

Filed in the District Court, District of Alaska, First Division, June 14, 1921.

J. W. BELL,

Clerk.

By V. F. PUGH,

Deputy.

Entered Court Journal No. D, Page 74.

18 In the District Court for the Territory of Alaska, Division Number One, at Juneau.

No. 2077-A.

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY, a Corporation, Plaintiffs,

vs.

JOHN W. TROY, Collector of Customs for the District of Alaska,
Defendant.

Petition for Appeal.

To the Honorable Robert W. Jennings, Judge of said court:

And now comes The Territory of Alaska and Juneau Hardware Company, a corporation, plaintiffs above named, by their attorney, John Rustgard, and feeling themselves aggrieved by the final decree of this Court filed on the fourteenth day of June, A. D. 1921, dismissing the above entitled cause, hereby pray that an appeal may be allowed to them from the said decree to the Supreme Court of the United States, and, in connection with this petition, petitioners herewith present an assignment of errors.

Petitioners further pray that an order fixing the amount of the bond of appeal be entered.

JOHN RUSTGARD,
Attorney for Plaintiffs.

The foregoing appeal is allowed and the bond on appeal fixed at the sum of \$250.00.

Dated June 14, 1921.

ROBERT W. JENNINGS,
District Judge.

Copy received this 14th day of June, 1921.

JAS. A. SMISER,

WALTER SCHAFFNER,
Att'y for Def't.

Filed in the District Court, District of Alaska, First Division, June 14, 1921.

J W. BELL,
Clerk.

19 In the District Court for the Territory of Alaska, Division Number One, at Juneau.

No. 2077-A.

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY, a Corporation, Appellants,

vs.

JOHN W. TROY, Collector of Customs for the District of Alaska, Appellee.

Assignment of Errors.

Now come the appellants, The Territory of Alaska and Juneau Hardware Company, a corporation, by their attorney, John Rustgard, and in connection with their petition for appeal, say that, in the record, proceedings and in the final order or decree aforesaid, manifest error has intervened to the prejudice of the appellants, to-wit:

I.

The Court erred in holding that Section 27 of the Act of Congress, June 15, 1920, entitled "An Act to provide for the promotion and maintenance of the American Merchant Marine, to repeal certain emergency legislation and provide for the disposition, regulation and use of property acquired thereunder, and for other purposes," did not conflict with the Constitution of the United States or any part thereof.

II.

The Court erred in holding that it is within the power of Congress to discriminate by way of rules of commerce against the ports of Alaska.

III.

The Court erred in holding that sub-section 6 of Section 9 of Article I of the Constitution of the United States did not apply to Alaska.

IV.

The Court erred in holding that the amended complaint did not state facts sufficient to constitute cause of action.

V.

The Court erred in holding and ruling that the amended complaint was defective and insufficient in this that it failed to allege that the route over which the shipment in question as described in the amended complaint is proposed to be sent is a route for which the Interstate Commerce Commission has prescribed rate tariffs.

VI.

The Court erred in holding and ruling that it was necessary for plaintiffs to allege in their complaint that the route over which the shipment in question is proposed to be sent is a route for which the Interstate Commerce Commission has prescribed rate tariffs.

20

VII.

The Court erred in sustaining the demurrer to plaintiffs' amended complaint.

VIII.

The Court erred in entering judgment dismissing this cause and refusing to enter a decree for plaintiffs as prayed for.

Wherefore, appellants pray that the decree of this Court made and entered on the 14th day of June, 1921, dismissing said cause, may be reversed and the plaintiffs have their relief prayed for in their complaint.

JOHN RUSTGARD,
Attorney for Appellants.

Copy received this 14th day of June, 1921.

J. A. SMISER,
WALTER SCHAFFNER,
Atty- for Deft.

Filed in the District Court, District of Alaska, First Division, Jun.
14, 1921.

J. W. BELL,
Clerk.

21 In the District Court for the Territory of Alaska, Division
Number One, at Juneau.

No. 2077-A.

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY, a
Corporation, Appellants,

vs.

JOHN W. TROY, Collector of Customs for the District of Alaska,
Appellee.

Bond on Appeal.

Know all men by these presents, That we, The Territory of Alaska, and Juneau Hardware Company, a corporation, as principals, and J. R. Heckman, as surety, are held and firmly bound unto John W. Troy, the appellee above named, in the full and just sum of \$250.00 to be paid to the said John W. Troy, his attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs and successors, jointly and severally, by these presents. Sealed with our hands and seals and dated this fourteenth day of June in the year of our Lord one thousand nine hundred and twenty-one.

Whereas, lately at a term of the District Court in the United States, for the Territory of Alaska, in a suit pending in said Court between the Territory of Alaska and Juneau Hardware Company, a corporation, as plaintiffs and John W. Troy, as defendant, a judgment was entered against the said plaintiffs dismissing their cause of action and the said plaintiffs having obtained an appeal to the Supreme Court of the United States at Washington, to reverse the judgment in the aforesaid suit,

Now, the conditions of the above obligation is such, That if the said Territory of Alaska and Juneau Hardware Company, a corporation, shall prosecute their appeal to effect and will pay the amount of said judgment and answer all damages and costs if they fail to make their appeal good, then the above obligation is to be void; else to remain in full force and virtue.

THE TERRITORY OF ALASKA AND
JUNEAU HARDWARE COMPANY,
A CORPORATION,

By Their Attorney, JOHN RUSTGARD,
Principals,
J. R. HECKMAN,
Surety.

Filed in the District Court, District of Alaska, First Division, Jun.
14, 1921.

J. W. BELL,
Clerk.

UNITED STATES OF AMERICA,
Territory of Alaska, ss:

J. R. Heckman, first being duly sworn, deposes and says: That
 22 he is a citizen and merchant of Ketchikan, Alaska, that he is
 worth the sum of \$500.00 over and above his debts and li-
 abilities and property exempt from execution; that he is not
 an attorney, marshal, clerk of any court or other officer of any court.

J. R. HECKMAN,

Subscribed and sworn to before me this 14th day of June, 1921.

[SEAL.]

H. M. STACKPOLE,

Notary Public for Alaska.

My commission expires Febr. 19, 1925.

The foregoing bond is hereby approved.

ROBERT W. JENNINGS,

District Judge.

Copy received this 14th day of June, 1921.

J. A. SMISER,

WALTER SCHAFFNER,

Atty. for Deft.

Filed in the District Court, District of Alaska, First Division, Jun-
 14, 1921.

J. W. BELL,

Clerk.

23 In the District Court for the Territory of Alaska, Division
 Number One, at Juneau.

No. 2077-A.

THE TERRITORY OF ALASKA and JENSEN HARDWARE COMPANY, a
 Corporation, Appellants.

VS.

JOHN W. TROY, Collector of Customs for the District of Alaska,
 Appellee.

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

To John W. Troy, Collector of Customs for the District of Alaska.
 Greeting:

You are hereby cited and admonished to be and appear at the Su-
 preme Court of the United States, at Washington, within sixty days
 from the date hereof, pursuant to an appeal filed in the Clerk's Of-
 fice of the District Court of the Territory of Alaska, Division One

thereof, wherein the Territory of Alaska and Juneau Hardware Company, a corporation, are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants as in the said complaint mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Robert W. Jennings, Judge of the District Court for the Territory of Alaska, Division One, this fourteenth day of June, 1921.

ROBERT W. JENNINGS,

Judge of the United States District Court for the Territory of Alaska, Division Number One.

Service of above citation admitted June 14, 1921.

JAS. A. SMISER,

WALTER SCHAFFNER,

Attys. for Defendant.

Filed in the District Court, District of Alaska, First Division, June 14, 1921.

J. W. BELL,

Clerk.

24 In the District Court for the Territory of Alaska, Division No. One, at Juneau,

THE TERRITORY OF ALASKA and JUNEAU HARDWARE COMPANY, a Corporation, Plaintiffs and Appellants,

vs.

JOHN W. TROY, Defendant and Appellee.

Præcipe.

The Plaintiffs, appellants, indicate the following as the portions of the record to be incorporated in the record on the transcript of appeal:

1. Amended complaint.
2. Demurrer to amended complaint.
3. Opinion of the court sustaining demurrer.
4. Final order and decree.
5. Petition for appeal and order granting same.
6. Assignment of errors.
7. Bond on Appeal.
8. Præcipe.
9. Citation.

JOHN RUSTGARD,

Attorney for Appellants.

Service of above præcipe admitted this 14th day of June, 1921.

JAS. A. SMISER,

WALTER SCHAFFNER,

Attorneys for Appellee.

Filed in the District Court, District of Alaska, First Division,
June 11, 1921.

J. W. BELL,

Clerk,

By V. F. PUGH,

Deputy.

25 *Certificate of Clerk U. S. District Court to Transcript of
Record.*

UNITED STATES OF AMERICA,

District of Alaska,

Division Number One, ss.

In the District Court for the District of Alaska, Division Number
One, at Juneau.

I, J. W. Bell, Clerk of the District Court for the District of Alaska,
Division Number One, hereby certify that the foregoing and hereto
attached 24 pages of typewritten matter, numbered from 1 to 24,
both inclusive, constitute a full, true, and complete copy, and the
whole thereof, of the record, as per the precept of the plaintiff in
error, on file herein and made a part hereof, in the cause wherein The
Territory of Alaska and Juneau Hardware Company, a corporation,
are Plaintiffs in Error and John W. Troy, Collector of Customs for
the District of Alaska is defendant in error, No. 2077-A, as the same
appears of record and on file in my office, and that the said record is
by virtue of an appeal and citation issued in this cause, and the re-
turn thereof, in accordance therewith.

I do further certify that the transcript was prepared by me in my
office, and the cost of preparation, examination, and certificate,
amounting to Twelve Dollars (\$12.00), has been paid to me by coun-
sel for plaintiff in error.

In witness whereof I have hereunto set my hand and the seal of
the above-entitled court this 15th day of June, 1921.

[Seal of the District Court for the District of Alaska, Div. No. 1.]

J. W. BELL,

Clerk.

Endorsed on cover: File No. 28,347. Alaska D. C. U. S., Division
No. 1. Term No. 392. The Territory of Alaska and Juneau
Hardware Company, appellants, vs. John W. Troy, Collector of Cus-
toms for the District of Alaska. Filed July 2d, 1921. File No.
28,347.